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IN THE

Supreme Court of the United States

October Term, 1972

No. A-389 72-717

JOSEPH CHARLES BONANNO, JR. and
SALVATORE VINCENT BONANNO,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The petitioners, Joseph Charles Bonanno, Jr. and Salvatore Vincent Bonanno, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on September 14, 1972.

Opinion Below

The opinion of the Court of Appeals, not yet reported, appears in the Appendix to this brief. No opinion was rendered by the District Court for the Northern District of California.

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Jurisdiction

The judgment of the Court of Appeals for the Ninth Circuit was entered on September 14, 1972. The petitioners were granted an extension of time by Mr. Justice Douglas to file the petition until November 13, 1972. This petition for certiorari was filed within that period.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Is Chapter 42 of Title 18, United States Code, an unconstitutional exercise of federal criminal jurisdiction as applied to non-loan sharking activities conducted wholly intrastate?

2. Were the petitioners denied a fair trial by the proof of past similar acts, coupled with prejudicial and gratuitous references and insinuations by prosecution witnesses to other crimes and criminal associations?

3. Was the proof with regard to the petitioner Salvatore Bonanno sufficient for conviction?

Statement of the Case

Indictment Cr.-71-110 charged the petitioners, Joseph Charles Bonanno, Jr. and Salvatore Vincent Bonanno, along with one Alfred John Salciccia, with six counts of collecting an extension of credit by extortionate means and conspiracy to do the same in violation of Title 18 U.S.C. Sections 894, 891(7), 371 and 2.

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Joseph Bonanno, Jr. and Salvatore Bonanno were tried together in the United States District Court for the Northern District of California (Hon. ROBERT F. PECKHAM, D.J. and a jury).* On December 17, 1971 the jury found Salvatore Bonanno not guilty under counts 1, 2, 3 and 4 of the indictment and guilty under counts 5 and 6. Joseph Bonanno, Jr. was found not guilty under counts 1 and 2, and guilty under counts 3, 4, 5 and 6.

On February 14, 1972 Salvatore Bonanno was sentenced to three years' imprisonment, the sentence to be served concurrently with a sentence of five years he was then serving. He was sentenced on count 5 to five years probation to be served concurrently with the sentence on count 6. Joseph Bonanno, Jr. was sentenced to five years in jail on counts 3, 4, 5 and 6, the sentences to run concurrently.

Notice of appeal was filed on February 16, 1972. The petitioner Salvatore Bonanno is presently serving his sentence. Joseph Bonanno, Jr. was allowed to remain on $10,000 bail pending the disposition of the appeal and the petition for certiorari, a motion to stay the mandate having been granted by the Ninth Circuit.

Statement of Facts

Introduction

The government charged that in May, 1970, Alfred Salciccia and Robert Piper entered into a joint venture to smuggle marijuana into the United States from Mexico. Piper had a contact who could purchase the drug in Mexico,

* On November 11, 1971, before trial, the co-defendant Salciccia pleaded guilty to count 6 of the indictment.

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while Piper, a pilot, would fly the cargo across the border in a private plane. Salciccia gave Piper $5,000 to be used in arranging transportation and purchasing the drug, while Salciccia expected to receive a share of either the profits or the marijuana. However, when the marijuana was lost during the flight from Mexico, Salciccia demanded the return of the money he invested. The government contended that Salciccia then utilized the services of Joseph Bonanno, Jr. and Patrick Hartigan to pressure Piper to pay, and that Salvatore Bonanno was in league with his brother.

The Government's Case

Robert Piper testified that in the months of May through August, 1970 he lived with his wife in San Jose. He was a mechanical engineer and draftsman, but made his living mainly as a pilot (R.T. 123-6). He was testifying under a grant of immunity (R.T. 127).

Piper first met Salciccia in July, 1969, Salciccia being the operator of a gas station near Piper's residence (R.T. 127-8). In May, 1970 Piper told Salciccia about a prospective deal to bring marijuana into the country from Mexico. An acquaintance, Earl Johnson, had a connection and would buy the marijuana, while Piper would fly the cargo across the border in a private plane (R.T. 128-33). Salciccia gave Piper $5,000 in cash, entitling him to become a partner (R.T. 128-9, 218). The gas station operator was to receive $3,000 worth of marijuana or $14,000 from the profits after the drug was sold (R.T. 213, 218). It was not contemplated that the money he gave Piper would be returned as such (R.T. 213). With Salciccia's money, Piper rented a plane and flew to Mexico with Earl Johnson on May 12,

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1970. Johnson bought the marijuana and two weeks later Piper flew his partner and his goods back to the United States (R.T. 130-3). On the way, however, Johnson ejected the cargo over the desert and, after landing drove into the desert to retrieve the merchandise (R.T. 133-4). As far as Piper knew, Johnson never located the marijuana (R.T. 134).

When Piper returned to San Jose he told Salciccia that the marijuana was lost in the desert and that Johnson was still looking for it. Salciccia told Piper that the money, or at least $2,500 of it, was needed, since certain people had to be paid back (R.T. 135). After unsuccessfully attempting to borrow from his friends, Piper eventually obtained $2,500 from his parents (R.T. 136), who had borrowed the money from a bank on May 26, 1970 (Bates, R.T. 6-9). Piper cashed the check from his parents and gave the money to a person Salciccia told him to meet the next day (R.T. 137-9). Piper also told Salciccia that he was not able to get the remainder at the moment, and repeated this to Salciccia on several occasions during the next few months. And while Salciccia was interested in payment, "he wasn't really pressuring me" (R.T. 139-41).

In August, 1970 Piper and a friend, Al Smith, met Salciccia to assure him that he would be paid. Smith was along to assure Salciccia that he would pay some money to Piper who would then pay the gas station attendant (R.T. 143). Pat Hartigan was also present at the meeting. He looked "very threatening" because he was big, wore tight clothes, and had an earring in one ear (R.T. 145, 203). Hartigan said that "when he was brought into a collection such as this, it was paid, and there was going to be

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no stalling around about it." If the money was not paid, "he would do what he had to do" (R.T. 146). Piper was "scared of Mr. Hartigan. I was afraid of the man," but Smith "laughed in his face," saying "you guys have got to be kidding," a response which "seemed to calm him (Hartigan) down a little bit" (R.T. 146-7).

The next day Hartigan telephoned Piper and told him to meet with him at Ken's Pancake House. Jimmy Arhontis was with Hartigan at the meeting. Hartigan tried to get Piper to mention a definite date for repayment within the next three days, but Piper would not give him one, although he said he would try to have something the next day (R.T. 148-9).

The next day Piper met Hartigan again at the pancake house. This time the petitioner Joseph Bonanno, Jr. was with Hartigan. Hartigan used "a threatening tone of voice" although "it may have been just the fact that I was afraid of him", while Bonanno said the debt should be paid, but said nothing about any consequences if it wasn't (R.T. 151-4).

The next day Piper still had no money to pay, and consequently did not attend another meeting at the pancake house. Hartigan called the following day and said "the debt was now $3,000 because I stood him up" and wanted to see Piper that night "with or without the money" (R.T. 154, 156). Piper met with Hartigan and Joseph Bonanno, Jr. that night, and Bonanno said he had wasted two hours the night before waiting. Piper apologized, explaining that he was afraid to come without the money, but Bonanno told him "don't be afraid whether

you have the money or not. But don't stand me up" (R.T. 157). Piper was still told by Hartigan that the debt was $3,000 and Bonanno suggested that Piper should pay because Piper was a nice guy and he "didn't want to see me get in trouble" or "get hurt" (R.T. 158-158a).

Piper met Hartigan for the next few weeks almost every day, with Joseph Bonanno, Jr. being present at about ten of the meetings (R. 159). Piper also had many phone conversations with Hartigan, and often had Smith talk to Hartigan on the phone. The meetings occurred sometimes at the pancake house, and often in Hartigan's apartment on Greenlee Drive (R.T. 160-4). Smith attended some of the meetings at the request of Piper to help "put them off" and occasionally pay some money (R.T. 167). Once Piper conferred with Hartigan in the apartment of Joseph Bonanno, Jr., who lived downstairs from Hartigan, but Bonanno went to sleep in the bedroom (R.T. 167-9, 204).

One night Piper met with Hartigan, Bonanno and Smith in a car outside the pancake house. Smith was "doing all the talking" for Piper, but Hartigan became increasingly angered "because of the stall we were giving him." Hartigan was told to leave the car if he couldn't control himself, and when Hartigan returned, he "took a swing at me and he hit me" (R. 173).

On another occasion Hartigan showed Piper a book containing names and amounts of money owed, explaining that "this was his full-time profession, that he collected money" (R.T. 175).

One night Piper was ready to tell Hartigan that he was not going to pay since he did not have the money. Bonanno, who was present, said he was "getting tired of this," stood up and knocked over a cup of coffee, saying "either pay it or don't pay it, but do something" (R.T. 178-9). During another conversation with Bonanno, Bonanno mentioned that Hartigan was "a reactionary type person" and Piper should pay "for your own good" (R.T. 179-80).

On August 13th, after Hartigan told Piper that he would be taken off the case and someone else who would "handle the situation differently" would appear on the scene, Piper paid $600 in two checks which he gave to Jimmy Arhontis, Hartigan's roommate (R.T. 181-4). Piper then decided to pay the balance and went to his parents again, explaining to them that he felt threatened. They gave him a check for $2,000. Piper then called Hartigan, but talked with Bonanno whose phone Hartigan often used. Piper asked Bonanno to come to pick it up. When Bonanno met him, Piper asked whether he should pay with the check or in cash, and Bonanno said he did not know. Bonanno then made a telephone call, and accepted the check (R.T. 187-92, 205-6).

Through the whole of the negotiations Joseph Bonanno, Jr. was "friendly, as opposed to being threatening" and gave Piper good advice and made no warnings (R.T. 193, 206). He never threatened Piper in any fashion at all (R.T. 200), and even at meetings when Hartigan was present, Bonanno was "calm * * * smiling * * * a friendly person" (R.T. 200, 206). He was a "peace-maker" between Piper and Hartigan (R.T. 200) and kept Hartigan calm

(R.T. 221). When Bonanno was together with Piper they usually talked about airplanes (R.T. 202). Piper was never afraid of the petitioner Joseph Bonanno, Jr. (R.T. 201), and Piper never met or talked with the petitioner Salvatore "Bill" Bonanno (R.T. 156, 199).

Maurice Patrick Hartigan testified that he is 24 years old and was a minor league baseball player, a bouncer, a construction worker and a motorcycle enthusiast, having rode with the Hell's Angels (R.T. 227-30, 393-4, 400). He pleaded guilty to the conspiracy count in the indictment and received a sentence of two years which was suspended for all but six months, and in addition he was placed on probation for three years. The other five counts were dismissed. Hartigan was also named in another indictment, but this was dismissed when he agreed to testify in the grand jury and at the trials (R.T. 386-7). He realized that he was facing a possible maximum of 100 years in jail (R.T. 390). Prior to meeting Joseph Bonanno, Jr. he had done some collecting of debts for Tacito Tailor Shop. Hartigan first stated that this collecting was done as a favor, but later he admitted obtaining huge discounts on expensive alligator shoes from Tacito (R.T. 553-8, 565-70). He invoked the Fifth Amendment at trial as to the purchase of these shoes (R.T. 570), but after receiving immunity (R.T. 764), Hartigan admitted that he bought the shoes with a stolen credit card which he obtained by "rolling a drunk" (R.T. 762-4, 824). In May, 1970 he committed a burglary of a San Jose supermarket, making off with a safe (R.T. 767-9).

In May, 1970 he moved into an apartment on Greenlee Drive with Jimmy Arhontis, a friend from childhood. Jo-

seph Bonanno, Jr. lived downstairs in the same building, and Hartigan met Bonanno through Bonanno's roommate, Bobby Baskin. Hartigan met Alfred Salciccia at his gas station where Arhontis worked (R.T. 231-4).

Occasionally Bonanno talked to Hartigan about debt collecting, explaining they could keep 50% of the sum recovered (R.T. 240-1). Bonanno remarked that the earring Hartigan wore could be good for business, since Hartigan was getting to be known (R.T. 242-3). In the latter part of July, Salciccia approached Hartigan and asked for his help in talking to someone who owed Salciccia money. "He wanted me to act tough with him" (R.T. 243, 429-30). Hartigan agreed and met that night with Piper and Smith about a $2,500 debt. Hartigan told Piper and Smith that if the debt wasn't paid there was "the possibility of somebody getting hurt" (R.T. 244-7, 431-4). A few weeks later Bonanno told Hartigan "we have got another one to do" and when Hartigan recognized the Piper situation, he explained to Bonanno that he already knew about it. Bonanno, according to Hartigan, was upset because Salciccia was using other people, and Bonanno met with Salciccia who thereafter left the matter in the hands of Hartigan and Bonanno (R.T. 247-50).

Hartigan then called Piper and arranged a meeting to talk about payment of the money. Piper assured Hartigan that Smith would help in making payments, since they were supposed to receive money from further drug deals (R.T. 250-1, 479-80, 491-5). Thereafter, Hartigan met Piper about four or five times a week for the next three weeks. Sometimes Hartigan met Piper with Bonanno and at other times with Arhontis. Hartigan also met with Smith to talk about

Piper's debt (R.T. 250-2, 456-7, 468). On one or two occasions, when Piper would miss a meeting, Hartigan went to Piper's home, although Piper would not let him in (R.T. 252, 272, 508). After Piper missed one meeting, Joseph Bonanno, Jr. raised the debt, which had been reduced by $400 received from Smith, back up to $2,500 (R.T. 252-3, 280-1, 470). Hartigan viewed his role as "the muscleman. I stood there to scare people" (R.T. 277). He was engaged in "fear motivation" (R.T. 278), and intended to induce fear (R.T. 780-2), although Hartigan told the grand jury that in his dealings with Piper "everything was pretty much on a friendly basis" (R.T. 783, 789-91). Hartigan related at one point that Piper was afraid of him (R.T. 463, 780), but also testified that Piper did not show any fear (R.T. 787-8). On one occasion Hartigan alleged that Bonanno instructed him to strike Piper (R.T. 282), but, in the incident in the parking lot outside the pancake house, Hartigan said that he gave Piper a backhanded slap not because he was ordered to, but because Piper was angry and swore, and the slap was tendered to make him "slow down" (R.T. 283, 500-6). Hartigan said that Joseph Bonanno, Jr. "doesn't make threats" (R.T. 444), and the severest thing said was that "we will do what we have to do" (R.T. 498). Nevertheless, Hartigan alleged that Bonanno was "the boss" and he followed his directions (R.T. 285).

Hartigan saw Joseph Bonanno, Jr.'s brother, the petitioner Salvatore "Bill" Bonanno, on a number of occasions. Though most of the time other things were discussed, on about six occasions the three talked about Piper's debt (R.T. 260, 264, 323-4). Hartigan didn't remember, however, when the first such discussion occurred (R.T. 710-11).

But Bill Bonanno became upset and said he needed money. He told them that "in order for a debt to be collected, somebody has to get hurt" (R.T. 260-1). At the other conversations regarding Piper, Bill Bonanno simply asked "how things were going" or told them to "keep things quiet" (R.T. 262-5). Bill Bonanno mentioned on one occasion that there was an investigation underway, and Joe and Hartigan should "cool it a little bit." He also suggested the possibility of leaving town in order to avoid a grand jury subpoena (R.T. 383-4). When Smith had paid $400 to Joseph Bonanno, Jr., Hartigan and Joseph drove to Bill Bonanno's home. Joseph went inside and came out later, saying he gave the money to his brother (R.T. 252-4, 267). Hartigan also used Bill Bonanno's car occasionally (R.T. 275).

Testimony was elicited by the prosecution from Hartigan concerning past debt collection activities with Joseph Bonanno, Jr. Hartigan said he would generally receive a slip of paper from Bonanno containing the name of the debtor, and then enter it in a book (R.T. 365-6). Hartigan first said he burned the book on the day he was arrested (R.T. 420), then said he burned it when he was let out on bail (R.T. 593-4, 712), and finally admitted he burned it after he had been interviewed by the F.B.I. and was cooperating (R.T. 718). Hartigan related that one of the previous debt collections concerned a Victor Romalo, who worked in John's Italian Restaurant in San Francisco. Hartigan said he drove with Joseph Bonanno, Jr. to the restaurant, and Bonanno told him to go in and tell Romalo that he owed $660 to Carl (R.T. 367-8, 419). Hartigan mistakenly told Romalo that he owed the money to Chris, and the dis-

cussion became very heated, finally moving outside where Bonanno became briefly engaged in the discussion (R.T. 368). Romalo threatened Bonanno and Hartigan with a shotgun (R.T. 426). Two weeks later, Hartigan and Joe Bonanno talked over the incident with Bill Bonanno, who explained to them why the argument occurred (R.T. 369-71). However, Hartigan never mentioned before, either to the grand jury, the prosecutor, or the F.B.I., that Bill Bonanno explained the incident (R.T. 653-70), and the first time he mentioned Bill Bonanno's participation was on the witness stand (R.T. 678-9, 681-3, 875). Hartigan then said that Joe Bonanno, Jr. had first explained why the argument occurred (R.T. 879).

Another past collection activity concerned Willy Ellis. Hartigan and Joe Bonanno, Jr. saw him five or six times at Manion's Bar where Ellis worked, and threatened him about the payment of a $700 gambling debt (R.T. 372-5). Once Hartigan went to the bar to see Ellis and used Bill Bonanno's car. The next night Bill Bonanno was "very angry" and told Hartigan not to park in front of the place he was entering because the police had taken down the license number of the car. Bonanno said to make sure to park a number of blocks away (R.T. 375-8).

When Joseph Bonanno, Jr. received the final $2,000 check from Piper, Hartigan was nearby on the street, having driven with Bonanno to the meeting place. After Bonanno collected the check, he picked up Hartigan and went to lease a cadillac at Grant-Bishop Chevrolet. Bonanno leased the car, and showed the dealer the check from Piper to assure that money was available. It was promised

that the check for $663 to pay for the car lease (R.T. 290-4; Anthony, R.T. 72-87) would be deposited on Monday, and Hartigan wrote out a personal check. They then drove to Bill Bonanno's home. There Hartigan wrote his own personal checks for Bill Bonanno's telephone and gas bills, and other household expenses, intending that enough of Piper's check would be deposited after the weekend to cover it (R.T. 298-305). On Monday Hartigan deposited sufficient funds (R.T. 310-13).

Hartigan stated that the recovery made on debts was supposed to be split between him and Joseph Bonanno, Jr., but in the end it was split with him and both Bonanno brothers (R.T. 326-8). He admitted that he felt cheated by both Bonannos, not only because of the recovery on the debt collection, but also because he gave Bill Bonanno $1,300 to buy his car, and then the car was repossessed shortly thereafter (R.T. 807-10, 861). Hartigan also admitted that after he talked to the F.B.I. he was charged as a co-conspirator instead of a defendant, with Bill Bonanno being substituted in his place as a co-defendant (R.T. 630-1).

John Derk Jansse testified that in the summer of 1970 the Bonanno brothers entered the store where he was employed, and Joseph Bonanno, Jr. asked about the location of John's Italian Restaurant (R.T. 1017-21). He did not remember whether Bill Bonanno participated in or overheard the conversation (R.T. 1023). It was stipulated that if Craig Jones were called, he would also testify that Joseph Bonanno, Jr. asked him and Jansse for the location of the restaurant, and he also was uncertain whether Bill Bonanno participated (R.T. 1132-3).

John Page, an FBI agent, related that he knew Hartigan from having known Hartigan's father for more than 10 years (R.T. 1031). He phoned Hartigan's father to tell him about the impending arrest of his son. After the arrest, Page conducted two lengthy interviews with Hartigan, on January 13 and 15, 1971, and remained in close contact with Hartigan's father regarding his son's cooperation (R.T. 1033, 1036, 1125-6). He told Hartigan's father that the FBI were particularly interested in the Bonannos (R.T. 1125). Hartigan never told him about stealing a credit card from a drunk, and only in October, 1971 did Hartigan reveal that he had engaged in a burglary (R.T. 1036, 1056).

Page introduced the reports of his interviews with Hartigan concerning the attempts to collect debts from Vic Romalo (R.T. 1046, 1051, 1111-12, 1114-5). In these interviews, Hartigan stated that Joseph Bonanno, Jr. explained why Romalo had become angry (R.T. 1111) and later the fact that Romalo had "squared away" his debt (R.T. 1112). The reports also contained detailed information on the attempt to collect the debt from Willie Ellis (Exhibits B and C).

The Defense

Thorman Hanson, Hartigan's probation officer, related that Hartigan told him at an interview in April, 1971 that the debts he collected were legal debts owed the Bonanno brothers by others (R.T. 1137-8). Hartigan said that he owed money to them also, and was working his debt off, partly by being Joe Bonanno, Jr.'s bodyguard (R.T. 1139-41). He stopped because he was not getting the money he thought he would (R.T. 1143).

John Sanchez Mapa, Hartigan's rehabilitation officer, testified that Hartigan told him in May, 1971 that he assisted Joe Bonanno, Jr. in collecting debts, but did not attempt to use physical force. He only passed messages back and forth (R.T. 1226-7).

Jim Arhontis testified that he knew Hartigan since grammar school, and moved into the Greenlee Drive apartments with him on May 1, 1970 (R.T. 1168-9). Joseph Bonanno, Jr. had an apartment in the same complex, and since Hartigan and Arhontis had no phone in their apartment, they used Bonanno's (R.T. 1170-1). Arhontis first met Piper at Salciccia's gas station, where he worked (R.T. 1172-3), and two or three weeks later he saw Piper with Hartigan at a restaurant where they talked about a debt which Piper owed Salciccia and which Hartigan was supposed to collect (R.T. 1173-4). Arhontis saw Piper thereafter at restaurants or at the gas station or in his apartment. Hartigan was with him on all occasions, and sometimes Joe Bonanno, Jr. was there, and sometimes Al Smith (R.T. 1174-8). He heard no threats made to Piper (R.T. 1182). On one occasion, Arhontis picked up a $200 check from Piper at Bonanno's request, Bonanno telling him that Hartigan had called and was unable to make the appointment (R.T. 1170-82, 1216, 1220, 1249).

Hartigan never said he was in the debt collecting business with Bonanno (R.T. 1182). He did show Arhontis a book with information about collecting gambling debts, but Hartigan said that most of the information in it came from a Carl in San Francisco, although some of it came from Joe Bonanno, Jr. (R.T. 1183, 1207, 1209, 1211).

The petitioner Joseph Bonanno, Jr. testified in his own defense, and related that he is 26 years old and attended college in Arizona. He moved to Greenlee Drive in May, 1970, rooming with Bobby Baskin, a childhood friend. Before that he lived at his brother's house for a short while, and prior to that he stayed with his parents in Arizona (R.T. 1272-3). He worked at managing entertainers, and also received money regularly from his parents (R.T. 1273-4, 1305).

Bonanno met Hartigan a few weeks after he moved in, since Hartigan shared an apartment with Arhontis upstairs. They used his phone, as did some female friends in the building who also had no phones in their apartments (R.T. 1275-6). Bonanno had met Salciccia through Baskin in 1969 (R.T. 1277), and at the end of July, 1970 he met Piper, the introduction being made by Hartigan or Arhontis at a restaurant (R.T. 1277-8). Bonanno saw Piper three or four times thereafter, none of the meetings being prearranged with him (R.T. 1278-9). On one occasion Hartigan made a threat to Piper at Ken's Pancake House (R.T. 1279). Bonanno became angry and upset, saying "I don't need this type of aggravation. I have been hounded enough, ever since I have been old enough to walk I have been hounded by the FBI. I just don't want no part of this" (R.T. 1280). Smith, who was also present, asked him why he was so upset, and Bonanno explained, "this reflects on me. If anybody is standing around and sees me, the FBI will blame me for something that I am not doing." Bonanno then walked out (R.T. 1280-1280a).

Bonanno explained that his endorsement appeared on the earlier checks from Piper since he cashed them for

Hartigan when Hartigan was unable to do so. He did not know that these checks were from Piper until the trial (R.T. 1282-3, 1362-3). With regard to the $2,000 received from Piper on August 15th, Bonanno explained that Piper phoned and asked for Hartigan. Since Hartigan was not there, Piper asked if Bonanno would meet him to pick up something for Hartigan (R.T. 1285). When Bonanno met Piper, Piper asked whether the check was acceptable instead of cash, and Bonanno telephoned the pancake house where he reached Hartigan who said to take the check. Bonanno then picked up Hartigan and asked him to lend him $600 for a car lease, explaining that he was expecting some money from his brother-in-law the next week (R.T. 1285-6). Also Bonanno had previously loaned money to Hartigan, since they were friends (R.T. 1283, 1328). They then went to his brother's house, and Bill Bonanno asked Joe to take care of some personal bills until after Bill returned from a short intended trip to Arizona. Hartigan then agreed to lend Joe the money for Bill (R.T. 1290). The loan from Hartigan was repaid the next week in cash when Bill returned from Arizona (R.T. 1291-2, 1324-5).

Bonanno swore that he is not guilty of any crime alleged in the indictment (R.T. 1292). Moreover, the only time he met Vic Romalo was when Hartigan had an altercation with him, and Bonanno stated that he does not know Willie Ellis (R.T. 1294, 1358). He asked directions to John's Italian Restaurant because he was supposed to meet his fiancee there (R.T. 1299-1300). He never told Hartigan to strike Piper, and never agreed with Salciccia to collect a debt from Piper (R.T. 1295-6).

Susie Laverne Owens, the front desk clerk for the Hyatt House Hotel, testified that Hartigan asked to cash two checks (Exhs. 14a & 14b), but they were over the amount normally cashed and Hartigan did not have sufficient identification (R.T. 1158-9). A half hour later he returned with Joseph Bonanno, Jr. who had previously cashed checks there, and Bonanno vouched for Hartigan, endorsing the checks himself (R.T. 1160-1, 1163).

Rebuttal

Rudolph Hoffman, an attorney and the owner of John's Italian Restaurant, testified that Hartigan entered one night asking for Vic Romalo. A loud argument ensued, and Hoffman encouraged them to take it outside where there was a brief discussion with another man in a car. The original altercation inside the restaurant concerned Romalo owing $1,500 to someone, and a demand that he should pay it (R.T. 1419-26).

Aubrey Burris testified he saw Joseph Bonanno, Jr., Hartigan and another at Manion's Bar in San Mateo in June or July, 1970. They talked to the bartender, Willie, about the fact that he had not kept an appointment. Bonanno was "perturbed" (R.T. 1445-8, 1451, 1456).

Reasons for Granting the Writ

I. Chapter 48 of Title 18, United States Code, is unconstitutional as applied to the non-loan sharking activities in this case, since there is no basis for federal criminal legislation.

This is not a loan-sharking case. The money Salciccia gave to Piper was not loaned for interest, either in statutorily recognized or exorbitant amounts, nor was any class of activity which affects interstate commerce involved. Rather, Salciccia and Piper entered into a joint venture for which Salciccia supplied the capital and hoped to receive in return either marijuana or profits from the sale of the drug. Salciccia thus became a partner in the enterprise without expectation that the money he invested would be returned as such (R.T. 213, 218). However, when the deal fell through, Salciccia simply decided that he wanted his money back, and enlisted the aid of Hartigan and the petitioner Joseph Bonanno, Jr. to collect it.

The use of extortionate means to make Piper pay, while falling within the language of Chapter 42 of Title 18, United States Code, is nevertheless insufficient to trigger the exercise of federal jurisdiction. For as *Perez* v. *United States*, 402 U.S. 146 (1971) makes clear, Chapter 42 was directed at classical loan sharking activities whose interstate ramifications provided the nexus for federal criminal legislation. As applied to that class of activities the statute is constitutional. However, where, as here, the extortion is not in furtherance of those criminal enterprises which affect commerce on a national scale, the extortion remains

purely local in character and beyond the powers of Congress to reach.

Obviously, the Supreme Court decision in *Perez* is the key to any discussion of Chapter 42. In *Perez* the petitioner was "one of the species commonly known as 'loan sharks' " (402 U.S. at 147). He loaned $1,000 to one Miranda to be repaid in installments of $105 per week for 14 weeks. After Miranda paid for six or eight weeks the petitioner increased the weekly rate to $130. Several months later the victim borrowed an additional $2,000 which was to be paid at the rate of $205 per week, an amount increased shortly thereafter. Miranda's objections were met with threats of violence and further rate increases, forcing Miranda to sell his business. Still Miranda was pursued by overt threats of injury to himself and his family. Petitioner claimed in the Supreme Court that since the loan sharking was done purely within the boundaries of New York, Congress could not regulate his actions, and thus the statute was unconstitutional. This Court disagreed. Justice Douglas, writing the majority opinion, reviewed exhaustively the legislative history of Chapter 42, and focused upon the evil Congress sought to prevent. Specifically, Congress was concerned with the entry or organized crime into the loan business, an entry which brought with it practices of usury and extortion. Most significantly for federal purposes, it was revealed that "the loan sharking racket provides organized crime with its second most lucrative source of revenue" (402 U.S. at 156), and that loan sharking "is the indispensable 'moneymover' of the underworld" funneling "black" money into "white" (*id.* at 149). Concomitantly, "organized crime operates on a national scale. One of the prin-

cipal sources of revenue of organized crime comes from loan sharking" (*id.* at 150). "Loan sharking in its national setting is one way organized crime * * * syphons funds from numerous localities to finance its national operations" (*id.* at 157). Because of these national ramifications, the Commerce Clause was an appropriate vehicle for federal involvement, since the loan sharking racket significantly affected interstate commerce, though the activities in a particular case may have been purely intrastate. Thus, the Court reasoned, the Commerce Clause allows Congress to regulate a "class of activities" which, as a class, is felt in interstate commerce. Loan sharking was determined by Congress to be an activity which sufficiently affected commerce to warrant federal legislation. And, the Court found, the "petitioner is clearly *a member of the class* which engages in loan sharking" (*id.* at 152-3, emphasis in opinion).

The total reliance in *Perez* on the nationwide effects of the loan sharking racket as a justification for federal crime jurisdiction highlights the conclusion that Congress may not regulate any and all extortions to collect money. Rather, only those intrastate extortions which evolve in the context of a class of activity affecting interstate commerce may be prohibited by the federal government. In other words, the use of extortion itself is jurisdictionally neutral; it does not influence commerce one way or the other. But the "extension of credit" must be of a class of activity which affects interstate commerce in order to confer federal jurisdiction. Thus, in *Perez* the "extension of credit" implicit in loan sharking was part of a scheme carried on throughout the country in aid of financing nationwide operations of organized crime. Where, however, the "extension

of credit" does not fall within the class of activity which Congress found to affect commerce, but is of a more private and provincial character, then any extortion used in aid of collection is left to the States under the Ninth and Tenth Amendments to deal with by state criminal statutes. Thus, as examples, if one lends $5 to an acquaintance and later threatens him for repayment, or if after an automobile accident, one of the drivers angrily threatens the other to pay the damages, it is wholly anomalous that federal crimes have been committed. For although the statute is technically violated, the "extension of credit" is not within a class of activity affecting interstate commerce.

The present case similarly does not fall into the class of activities *Perez* treated, nor are the petitioners members of the class Congress could regulate under the Commerce Clause. Indeed, the extortion alleged here was a particularly local variety, stemming from the failure of a joint criminal venture to produce the profits expected by the capital investor—hardly the class of activity involved in *Perez*.* Too, of course, the use of the money collected from Piper to pay the petitioners' household bills and car lease does not suggest the "national setting" in which organized crime "syphons funds from numerous localities to finance its national operations" that *Perez* deemed so important to the exercise of federal criminal jurisdiction. Accordingly, any attempt to convince Piper to pay the

* The fact that the underlying plan involved smuggling across national borders does not aid the exercise of federal jurisdiction with respect to 18 U.S.C. 894, for no crime begins under the statute until threats are made to recover the extension of credit. Moreover, the "extension of credit" here was wholly intrastate. What Piper decided to do with the money after he obtained it is not jurisdictionally relevant to the crime charged in the indictment.

money Salciccia claimed did not evolve from the class of activity which *Perez* held could justify congressional criminal legislation. Rather it is activity which properly remains within the domain of the States to regulate. Thus Chapter 42 of Title 18, as applied to the present case, is an unconstitutionally broad exercise of federal power.

II. The petitioners were denied a fair trial by the introduction of proof of past similar crimes not charged in the indictment, coupled with prejudicial and gratuitous references by prosecution witnesses to other crimes and criminal associations.

During the course of the trial, the major prosecution witness, Hartigan, was caught in a number of serious inconsistencies and contradictions, gravely affecting his credibility. For instance, though he originally related that Piper was afraid of him because of his threats, he also acknowledged that everything was "on a friendly basis," and that Piper was not afraid of him (R.T. 463, 780-3, 787-91). Moreover, though Hartigan alleged he was always telling the truth once he decided to cooperate, he clearly was playing a double game to protect himself. Thus, after stating that he burned the book in which he recorded information about debt collection, he finally admitted that he burned it at a time when he was supposedly fully cooperating and telling the truth to the F.B.I. (R.T. 420, 593-4, 712, 718). In addition, he never mentioned to the F.B.I. that he had committed a burglary, a revelation which was first disclosed on trial only after he was given immunity upon a claim of privilege (R.T. 570, 764, 767-9). Furthermore, Hartigan's testimony with regard to Salvatore Bonanno was highly suspect. Not only did he reveal certain facts about Bill

Bonanno for the first time on trial, after having failed to mention them to the grand jury, the F.B.I. or the prosecutor, but he eventually admitted he felt he was cheated by the Bonannos and Bill in particular, because a car he bought from him was repossessed after Hartigan purchased it (R.T. 807-10, 861). Too, after Hartigan decided to cooperate, he was dropped from the list of co-defendants and Bill Bonanno substituted in his place (R.T. 630-1), an event which Hartigan could well have desired because of the serious consequences hanging over his head if convicted after trial. Indeed, a reading of Hartigan's full testimony reveals that he was often shaky on material aspects of his proof, leading to a real possibility that the jury would not easily accept his version of events.

In this setting, the prosecution attempted to bolster its case, and Hartigan's credibility, by offering proof, both through Hartigan and collateral witnesses, that this was not the only time the Bonannos and Hartigan tried to collect a debt by extortion. On two other occasions in the past they had endeavored to do what the indictment charged they did to Piper. Specifically, the proof concerned attempts to extort repayment of debts from two other people, Vic Romalo and Willie Ellis. In support, Hartigan related approaches and threats he made to them at the instigation of Joseph Bonanno, Jr., as well as testifying about his use of Bill Bonanno's car and Bill Bonanno's knowledge of events. In addition, two other witnesses related that Joe Bonanno, Jr. had asked for directions to the restaurant where Romalo worked, and agent Page introduced notes of two interviews with Hartigan which recounted in detail the attempts on Romalo and Ellis and the participation of the Bonannos. Finally, after Joseph Bonanno, Jr. took the stand and

denied involvement in these past offenses, rebuttal witnesses were called who placed him on the scene and in conversation with Romalo and Ellis. The ostensible purpose of such proof was to show "intent" or possibly the existence of a common scheme or plan. The actual effect was clearly to tell the jury that if the Bonannos were engaged in similar schemes before, they probably were engaged in it again, and that Hartigan's testimony should therefore be believed.

In *Parker* v. *United States,* 400 F. 2d 248 (9th Cir. 1968), the court commented on the difficulties and dangers of such testimony by adopting with approval language from *United States* v. *Stirone,* 262 F. 2d 571 (3d Cir. 1959):

> "The question of admissibility of evidence of offenses other than the one for which the defendant is on trial is a very difficult one * * * The difficulty is one which is inherent in the nature of the problem. Anyone obligated to determine the guilt or innocence of a defendant charged with a particular crime invariably would be influenced by a showing that the defendant commits crimes in general * * *" (400 F.2d at 251)

However, such evidence is generally admissible to prove intent, identity, knowledge, mistake, or common scheme or plan, though there will be a reversal when evidence of prior similar crimes is offered to show criminal disposition, or where the evidence is irrelevant, or where it is insufficiently probative to offset the prejudice. *Parker* v. *United States, supra* at pp. 251-2; *Thomas* v. *United States,* 363 F. 2d 159 (9th Cir. 1966); *Cook* v. *United States,* 354 F. 2d 529 (9th Cir. 1965); *United States* v. *Diaz-Rosendo,* 364 F. 2d 941 (9th Cir. 1966).

In the present case the introduction of the evidence of past crimes was highly questionable. Though the prosecution suggested frequently that prior debt collecting activ-

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ities was offered to prove "intent," intent was not really an issue in the case. For the statute does not require a specific intent to commit the crime. All that is necessary is proof of an extension of credit and use of threats to recover the money. And proof of past acts, when admitted to show intent, must relate to a statute where something more is required than general criminal intent. Thus, in *Farkas* v. *United States,* 2 F. 2d 644, 647 (6th Cir. 1924), the court held that in a prosecution for receiving money under threat of informing, intent was not an issue under the statute, and proof of past similar acts could therefore not be used to show intent. Moreover, unless the defense sharpens the issue by asserting that the act was done by mistake or accident, proof of past similar crimes is inappropriate. Thus, in *United States* v. *Byrd,* 352 F. 2d 570 (2d Cir. 1965), the court stated:

> "Another factor to be considered is whether the Government was faced with a real necessity which required it to offer the evidence in its main case. The defense had not, either in its claims or the statement of facts which it would seek to prove, 'sharpened' the issue of intent by asserting that the act charged was done innocently or by accident or mistake." (352 F 2d at 575).

Furthermore, the court in *Byrd* pointed out, in language appropriate to the introduction of past crimes through Hartigan's testimony, that

> "from the quality of proof standpoint for proving knowledge and intent, its probative value was largely cumulative. The evidence came from the mouth of the same witness, Kaufman, who testified to the occurrences in the first two counts. If the jury believes his testimony as to those counts, the relating of the Sandberg incident added little, if anything, to a revelation of

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> Byrd's state of mind. If they had disbelieved Kaufman's testimony about the first two counts, it is not very likely they would have believed his story about the Sandberg tax audit." (352 F. 2d at 574-5).

Perhaps with the realization that Hartigan's allegations about past crimes would be taken by the jury in the same light as the rest of his testimony, the Government introduced collateral witnesses on its direct case, specifically to corroborate Hartigan with respect to the issue of past crimes (R.T. 982-3). The issue thus expanded out of all proper proportions, as Hartigan's F.B.I. interviews, which detailed the Romalo and Ellis incidents, were received in evidence, along with testimony of two witnesses showing Joseph Bonanno, Jr.'s interest in the location of the restaurant where Romalo was employed. Thus, the danger became more imminent that "the jury even under the best of instructions" would not "strictly confine the use of this kind of evidence to the issue of knowledge and intent and wholly put out of their minds the implication that the accused, having committed the prior similar criminal act, probably committed the one with which he is actually charged" (*United States* v. *Byrd*, 352 F. 2d at 574, *supra*). Indeed, though the proof offered here may also have been used to show a common scheme or plan (see, *Collins* v. *United States*, 383 F. 2d 296 (10th Cir. 1967), the slight probative value it may have was more than offset by its prejudicial and inflammatory effects:

> "the scope of discretion does not include every offer of a prior similar offense which may contribute something to a showing of intent in the Government's main case. Where the prejudice is substantial and the probative value, through the nature of the evidence or the lack of any real necessity for it, is slight, its ad-

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mission at that stage may be held to be an abuse of discretion" (*United States* v. *Byrd*, 352 F. 2d at 575, *supra*).

Though the question as to admissibility may be close, the inherent prejudice arising from proof of prior similar crimes was supplemented by various gratuitous remarks of prosecution witnesses regarding other crimes and criminal associations. Thus, at one point Hartigan referred to the defendants' association with "organized crime" (R.T. 882-3). On another occasion Hartigan gratuitously referred in general to Bill Bonanno's past criminal activity (R.T. 256). And, most significantly, agent Page was at one point asked by the prosecutor why he did not tell the local police in full about the burglary Hartigan admitted committing. Page blithely and somewhat unresponsively answered that it was because Hartigan turned over a blank traveler's check (part of the loot), saying that it came from Joseph Bonanno, Jr. (R.T. 1059). Though all these remarks were properly struck out by the court, their collective effect, coupled with the evidence of past similar crimes, was guaranteed to endanger any fair assessment of the case by the jury. Consequently, there should be a new trial, free of evidence tending to show that the petitioners generally engaged in committing crimes.

III. There was insufficient proof of guilt with respect to the petitioner Salvatore Bonanno.

Salvatore Bonanno was acquitted of four counts, but convicted under counts 5 and 6 for conspiracy and a substantive violation relating to the final $2,000 payment by Piper. He was implicated solely by the testimony of Hartigan who related alleged conversations in which Bill Bonanno participated and the facts of Bill Bonanno's

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acceptance of money from Hartigan to pay household expenses. Yet the proof offered falls short of any reasonable doubt standard, even viewed in the light most favorable to the government.

Piper never met or talked to Bill Bonanno, and Hartigan alleged that Joseph Bonanno, Jr. made all the decisions and was the boss (T.R. 285, 324). The debt collecting scheme was, moreover, a joint endeavor between Joe Bonanno, Jr. and Hartigan, and the profits were supposed to be split evenly only between them. Though Bill Bonanno met frequently with his brother and Hartigan, very few of the conversations concerned the Piper situation (R.T. 260-5), and those that did do not show that Bill Bonanno actively participated in the conspiracy or ever agreed to join it. Indeed, though he obviously had knowledge of the attempt by his brother and Hartigan to collect money from Piper, Bill Bonanno's comments were usually confined to expressions of polite interest, asking "how things were going" (R.T. 262-3). The only colorable statement attributed to him by Hartigan was when he once mentioned that he needed money and also said that "in order for a debt to be collected, somebody has to get hurt" (R.T. 260-1). This statement, in response to grievances expressed by Hartigan and Joe Bonanno, Jr. about Piper's stalling tactics, hardly shows an active participation in the venture or brands Bill Bonanno a partner in crime. It was certainly not a direction to use physical force. Rather it seems an observation about how debts could successfully be collected. Indeed, the presence of an individual at the scene of a crime, even with knowledge that a crime is being committed, is insufficient to convict him for conspiracy or as an aider and abettor in a substantive violation. *NYE*

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& Nissen v. *United States,* 336 U.S. 613 (1949); *United States* v. *Ramirez,* 363 F. 2d 33 (9th Cir. 1966); *United States* v. *Garguilo,* 310 F. 2d 249 (2nd Cir. 1962); *United States* v. *Barber,* 429 F. 2d 1394 (3rd Cir. 1970); *Hendrix* v. *United States,* 327 F. 2d 971 (5th Cir. 1964).

Moreover, it is difficult to conclude that Bill Bonanno had a stake in the venture because of his acceptance of money to pay household expenses. Rather it seems more likely that he realized money was available to his brother, and simply borrowed what he needed at that moment. Indeed, to have Hartigan write personal checks for Bill Bonanno's phone and gas bills appears a strange way to share the profits of a criminal enterprise.

In sum, then, Salvatore Bonanno was not shown to do anything more than hover about the fringes of his brother's business with some knowledge of what his brother was engaged in doing. Under such circumstances, there was more than a reasonable doubt that he actively agreed to participate in the crimes for which he was convicted.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix

Opinion of the Court of Appeals

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 72-1779

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

JOSEPH CHARLES BONANNO, JR.,
Defendant-Appellant.

No. 72-1780

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

SALVATORE VINCENT BONANNO, a/k/a BILL BONANNO,
Defendant-Appellant.

On Appeal for the United States District Court
for the Northern District of California

Before:

HAMLIN and GOODWIN, Circuit Judges,
and CRARY, District Judge*

* Honorable E. Avery Crary, United States District Judge, Central District of California, sitting by designation.

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HAMLIN, Circuit Judge:

Appellants Salvatore and Joseph Bonanno were convicted of the offenses of collection of an extension of credit by extortionate means, in violation of 18 U.S.C. §894; conspiracy, in violation of 18 U.S.C. §371; and principal to a crime, in violation of 18 U.S.C. §2. Their conviction arose out of procedures which they utilized in collecting a debt owed by one Robert Piper.

Piper was an airline pilot who entered into a scheme with one Alfred Salciccia for smuggling marijuana by air into the United States from Mexico. Salciccia gave Piper $5,000 to be used in arranging transportation and purchase of the drug, while Salciccia expected to receive a share of either the profits or the marijuana. However, the marijuana was lost during the flight from Mexico.

When informed of the aborted smuggling effort, Salciccia stated that certain people had to be paid back "within the next week or so because they were getting a little edgy for the money." Salciccia then said that at least $2,500 had to be repaid immediately. Piper eventually obtained the $2,500 from his parents and paid it over to Salciccia's representative. He also made repeated assurances to Salciccia that the balance would be paid.

Several weeks passed and Salciccia, apparently not mollified by Piper's assurances, eventually called upon Joseph Bonanno, Jr., to provide assistance in collecting the debt. Bonanno, in turn, utilized the services of Pat Hartigan to aid him in the collection process.

Thereafter ensued a series of meetings involving Hartigan, Joseph Bonanno, Piper and, occasionally, one Al Smith, a friend of Piper's who often made payments on

Piper's debt. Piper once failed to attend one of these meetings; because of this the debt balance was raised from $2,500 to $3,000.

Throughout these protracted series of meetings, Joseph Bonanno, Jr., often voiced threats concerning what would happen to Piper if he did not pay. On one occasion, Hartigan struck Piper. Ultimately, Piper, through the help of his parents, was able to pay the debt.

At trial below, Hartigan testified as a Government witness. He stated that Joseph Bonanno, Jr., had solicited him to assist in debt collections. Hartigan further testified that he was employed as a "muscleman," engaged in "fear motivation." He also told how similar tactics were employed in collecting debts owed by Vic Romalo and Willy Ellis.

Hartigan's testimony also revealed that Salvatore "Bill" Bonanno was actively concerned with the status of these debt collections, that he often participated in discussions concerning the Piper, Romalo, and Ellis debts, and that he advocated the use of force to expedite collections. He further testified that Bill Bonanno discussed the Piper debt with him almost daily. In discussing the Piper situation, Bill had told Hartigan that "in order for a debt to be collected, somebody has to get hurt." Hartigan also maintained that he split the collection "take" with both of the Bonanno brothers, and that a substantial portion of Piper's final installment had gone to underwrite certain personal expenses incurred by Salvatore Bonanno.

The government also introduced other evidence and testimony that further confirmed Hartigan's testimony.

On appeal, three contentions are advanced. First, appellants argue that they were engaged only in isolated debt

collections of a private and provincial nature, that these collections did not occur as part of a classical "loansharking" scheme, that they did not have an effect on interstate commerce, and, thus were not within the class of activities proscribed by Congress in Title II of the Consumer Credit Protection Plan, 18 U.S.C. §891 *et seq.* [hereinafter, Act].

This contention is clearly untenable. The purely intrastate nature of these activities does not remove them from the Act's coverage. As stated in *Perez* v. *United States*, 402 U.S. 146 at 154:

> "Where the *class of activities* is regulated and that *class* is within the reach of federal power, the courts have no power 'to excise as trivial, individual instances' of the class. *Maryland* v. *Wirtz*, 392 U.S. 183, 193.
>
> "Extortionate credit transactions, though purely intrastate, may in the judgment of Congress affect interstate commerce, in an analogous situation. Mr. Justice Holmes, speaking for a unanimous Court, said: '[W]hen it is necessary in order to prevent an evil to make the law embrace more than the precise thing to be prevented it may do so.' *Westfall* v. *United States*, 274 U.S. 256, 259." 402 U.S. at 154.

Clearly, petitioners are members of a class which engages in extortionate credit transactions as proscribed by the Act.

Nor is appellants' contention that they were merely collecting a simple debt of any benefit to them. The Act provides that whoever participates or conspires to use any extortionate means to collect any extension of credit has violated the law.[1] Thus, the Act is viewed as being a

1. 18 U.S.C. §894 provides, in pertinent part:

> (a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means
>
> (1) to collect or attempt to collect any extension of credit • • •
>
> (2) • • • shall be fined • • • or imprisoned • • • or both.

"comprehensive federal attack on loan sharking." United States v. Perez, 426 F.2d 1073, 1075 (2d Cir. 1970), *aff'd.* 403 U.S. 146 *supra.* Appellants' activities were clearly within the ambit of the Act's proscriptions and it would be inconsistent with the spirit of the Act to find otherwise.

Secondly, appellants contend that the trial court erred in admitting evidence relating to the Romalo and Ellis collections, inasmuch as they were not charged in the indictment. They contend that admission of evidence relating to these prior illegal acts denied them a fair trial.

We do not agree.

One of the charges in the indictment alleged conspiracy. In conspiracy prosecutions, the government has considerable leeway in offering evidence of other offenses. *Hanger* v. *United States,* 398 F.2d 91 (8th Cir. 1968), *cert. denied,* 393 U.S. 1119 (1969), *reh. denied,* 395 U.S. 971 (1969). Evidence of these prior collections would be admissible to show some material facts relating to the conspiracy charged. *United States* v. *Jones,* 425 F.2d 1048, 1051 (9th Cir.), *cert. denied,* 400 U.S. 823 (1970). It would also be relevant to show that they were continuing along the same line in their collections. United States v. DeSapio, 435 F.2d 273, 280 (2d Cir. 1970), *cert. denied,* 402 U.S. 935 (1971).

In any event, even assuming *arguendo* that the evidence relating to the Romalo and Ellis collections should not have been admitted, it could not have been prejudicial, given the strength of the government's case. *Cf. United States* v. *Masters,* 450 F.2d 866, 868 (9th Cir. 1971), *cert. denied,* — U.S. — (1972).

Finally, appellant Salvatore Bonanno contends that the evidence was insufficient to justify his conviction. There

was, however, testimony indicating that Salvatore participated in discussions concerning the Piper debt, that he urged the use of violence and force in collecting the debt, and that he had ultimately benefited personally from the proceeds of the Piper collection.

As we are required to view the evidence in a light most favorable to the government, *Glasser* v. *United States*, 315 U.S. 60 (1941); *United States* v. *Scott*, 452 F.2d 660 (9th Cir. 1971), we must therefore reject this contention as untenable. The government needed only to present facts from which the jury could draw the reasonable inference that appellant Salvatore Bonanno was guilty beyond a reasonable doubt. *United States* v. *Magana*, 453 F.2d 414, 415 (9th Cir. 1972); *United States* v. *Brown*, 436 F.2d 702, 704 (1970). This it has done.

The judgment is affirmed.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-717

JOSEPH CHARLES BONANNO, JR. AND SALVATORE V. BONANNO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of California, petitioners were convicted of using extortionate means to collect an extension of credit and of conspiracy, in violation of 18 U.S.C. 894 and 371. Joseph Bonanno was sentenced to concurrent terms of imprisonment for five years and Salvatore Bonanno was sentenced to probation for five years, to commence upon release from custody for another federal sentence presently being served. The court of appeals affirmed, 467 F. 2d 14 (Pet. App.).

The evidence is set forth in the opinion of the court of appeals and at Pet., pp. 3-19. In brief, it shows

that Joseph Bonanno was employed to collect a debt owed by Robert Piper to co-defendant Alfred Salciccia. Joseph Bonanno used the services of Pat Hartigan, a "muscleman," to assist in the collection. Joseph Bonanno, Hartigan and Piper met frequently to discuss the debt, and various payments were secured. Throughout the course of the meetings, threats were made to Piper, and on one occasion Hartigan struck Piper. Hartigan also warned that similar tactics had been used to collect debts owed by two other individuals. Moreover, when Piper once failed to attend a meeting, Joseph Bonanno announced that the debt would be raised from $2,500 to $3,000 as a penalty for his unexcused absence. The debt in its inflated amount was eventually satisfied.

Although Salvatore Bonanno did not participate in the discussions with Piper, he met with Joseph Bonanno and Hartigan frequently to review the progress of the collections and to give advice on how to handle Piper. Salvatore Bonanno advocated the use of force. When payments were collected, he shared in the proceeds.

Petitioners here urge (1) that their conduct did not fall within the scope of 18 U.S.C. 894 because it was purely intrastate and confined to collection of only one debt; (2) that the evidence relating to the collection of debts from other persons by use of the same techniques as the petitioners used to collect from Piper was improperly admitted, since petitioners had not been charged with any offenses arising from these collections; and (3) that the evidence was insufficient to convict Salvatore Bonanno. These arguments were

fully explored and properly rejected by the court of appeals (Pet. App. 1a–6a). We rely on the opinion below in urging that the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1973.

U.S. GOVERNMENT PRINTING OFFICE: 1972